

## **Disability Protections**

Wisconsin's Fair Employment Law gives civil rights protections to qualified persons with disabilities. The law applies to virtually all, private and public employers, regardless of the number of employees.

Under the federal Americans with Disabilities Act (ADA), disability discrimination is also prohibited for employers having 15 or more employees.

Both laws are designed to ensure equal opportunity in all aspects of employment.

## **What actions are covered?**

The law protects persons with disabilities against discrimination in:

- Recruitment and hiring
- Job assignments
- Pay
- Leave or benefits
- Promotion
- Licensing or union membership
- Training
- Lay-off and firing
- Other employment related actions

The law also prohibits an employer from retaliating against applicants or employees who assert rights under the law. Harassment on the job because of a person's disability is also prohibited.

## **Who is protected?**

The law protects individuals with disabilities who are qualified and can perform the essential functions of a job, with or without a reasonable accommodation.

An individual with a disability is a person who:

- has a physical or mental impairment that makes achievement unusually difficult or limits the capacity to work;
- has a record of such an impairment, or
- is perceived as having such impairment.

The first part of this definition applies to a substantial impairment that limits a person's major life activities such as seeing, hearing, walking, learning, and working. For example, a person with diabetes, epilepsy, or mental retardation would likely be covered, but a person with a minor, non-chronic condition of short duration, such as a broken leg or occasional headaches would generally not be covered.

The second part of this definition covers a person who had a disability but is now recovered. For example, a person with cancer that is in remission, or a person with a history of mental illness would be covered.

The third part of this definition includes a person who is "perceived" as having a disability. For example, an applicant whose physical exam revealed a prior back injury that would not affect job performance would be covered.

In many cases, it is difficult to decide if a condition is a disability under the law without having a written diagnosis from a physician or another health care provider. Typically, the facts in each case must be reviewed. For example, a pattern of relatively minor headaches may not be a disability whereas severe recurring migraines would likely be a disability.

### **Is AIDS a disability under the law?**

Yes, a person with AIDS is protected under the law and may not be discriminated against because of this disease.

### **How does the law apply to alcoholism and drug addiction?**

Alcoholism and drug addictions are disabilities under state law and a person may not be discriminated against for either reason. Under the ADA, a "current" user of illegal drugs is not protected although one who is recovering or who is in a supervised drug rehabilitation program is covered under both state and federal laws.

Employers may require employees who use alcohol or have abused drugs to meet the same standards of performance and conduct set for other employees and may prohibit the use of illegal drugs and alcohol in the workplace.

### **Can an employer refuse to hire a person because of a disability?**

A person with a disability may be passed over if the disability is reasonably related to the person's ability to adequately and safely perform job-related duties. An employer may consider if a person's disability would constitute a hazard to the safety of the person, coworkers or the public. However, an employer may not assume a hazard exists because of a person's disability and must typically establish through objective or medically supported evidence that a significant risk of substantial harm would occur.

An employer has a legitimate interest in maintaining a safe workplace, but may not generalize rejection of persons with disabilities. If a hazard does exist, an employer has a further duty to determine if a reasonable accommodation can be made to reduce the hazard to an acceptable level.

### **Must an employer hire a qualified person with a disability over other qualified applicants without a disability?**

An employer is not required to hire a qualified applicant with a disability over other qualified applicants. However, an employer may not refuse to hire a person with a disability because of the disability or because a reasonable accommodation is required to make it possible for the person to perform essential job functions.

Can an employer discriminate against a person who has an association with a person with a disability?

Under state law, disability "by association" is not covered. This refers to discrimination against an individual because a spouse, child or friend has a disability. However, the federal ADA does protect individuals against discrimination on this basis and a complaint may be filed with the US. Equal Employment Opportunity Commission (EEOC). See the disability resources section for contact information.

### **What is a reasonable accommodation?**

A reasonable accommodation is any modification or adjustment to a job, the work environment or how things are done that enables a qualified applicant or employee with a disability to participate in the application process, perform essential job functions or enjoy the same employment rights and privileges as other employees.

A person with a disability is often the best source for identifying the most effective accommodation. A person with a disability is generally expected to make a request for an accommodation, unless the need for one is obvious.

An employer is required to make a reasonable accommodation unless it would result in a hardship to the business. The hardship standard will vary with each case. Generally, a hardship may exist if the accommodation is difficult or expensive to achieve in relation to the size and resources of the business. If the accommodation is unduly costly or disruptive or would fundamentally alter the nature of the business it might also represent a hardship.

### **What kinds of reasonable accommodations might be involved?**

Following are some typical solutions:  
Modifying how exams or training are given;  
Installing a ramp for building access;

Making restrooms accessible;  
Making telephones accessible;  
Raising a desk for wheelchair access;  
Offering part-time or flexible work schedules;  
Restructuring a job or redistributing minor job functions;  
Reassigning an employee to a vacant position;  
Providing reserved parking

**Resource Tip:** The JOB ACCOMMODATIONS NETWORK is listed in this pamphlet under "disability resources". Call them if you need ideas on accommodations for a specific disability.

### **May an employer ask about a disability?**

Inquiries about a person's disability, health or worker's compensation history is unlawful if they imply or express a limitation based on disability. Under the federal ADA, any inquiry at the pre-employment stage, which would likely require an applicant to disclose a disability, is unlawful. Employers are advised to avoid such inquiries or medical examinations before making a bona fide job offer.

However, an employer may inquire about an applicant's ability to perform essential job functions and, within certain limits, may conduct tests of all applicants to determine if they can perform such functions, with or without an accommodation.

### **How do the worker's compensation and fair employment laws apply for persons who sustain a work-related injury?**

An employee injured on the job and covered by the worker's compensation law is not precluded from seeking remedies under state or federal fair employment laws. If the injury results in a disability as defined under the fair employment law, and the employee is not returned to work, not reasonably accommodated or faces another adverse action because of the disability, the employee may file a discrimination complaint under the fair employment law. An employee may also seek any rights separately available under the worker's compensation law.

### **How is the law enforced?**

Persons who believe they have been discriminated against because of a disability may file a complaint with the Equal Rights Division within 300 days of knowing about the alleged discrimination. The division investigates complaints, helps parties settle cases or, as necessary, orders remedies if discrimination is found. For information on filing a complaint, contact the Equal Rights Division at one of the two offices listed below.

### **Disability Resources**

A number of important resources are available to assist employers and persons with disabilities. A few key agency resources are:

JOB ACCOMMODATIONS NETWORK (JAN)  
WEST VIRGINIA UNIVERSITY-809 ALLEN HALL  
PO BOX 6123  
MORGANTOWN WV 26506-6123  
(800) 526-7234 (Voice/TDD)  
Technical Assistants making reasonable accommodations

GREAT LAKES DISABILITY & BUSINESS TECH CENTER  
UNIVERSITY OF ILLINOIS-CHICAGO UAP  
1640 W ROOSEVELT RD. M/C627  
CHICAGO IL 60608  
(800) 949-4232 (Voice/TDD)  
Technical Assistants on general ADA compliance

EASTER SEAL SOCIETY OF WISCONSIN INC  
101 NOB HILL RD SUITE 301

MADISON WI 53713  
(608) 277-8288 (Voice/TTY)  
Technical Assistants on Accessibility in buildings

WISCONSIN DIVISION OF VOCATIONAL REHABILITATION  
201 E WASHINGTON AVE  
PO BOX 7852  
MADISON WI 53707  
(800) 442-3447 (Voice and TTY)

NAMI WISCONSIN (National Alliance on Mental Illness)  
4233 W BELTLINE HWY  
MADISON WI 53711  
(800) 236-2988

US EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)  
310 W. WISCONSIN AVE SUITE 800  
MILWAUKEE WI 53203  
(414) 297-1111, (414) 297-1115 (TDD)  
Information about federal employment protections under the ADA

**Questions about employment discrimination should be directed to:**

**STATE OF WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EQUAL RIGHTS DIVISION**

201 E WASHINGTON AVE ROOM A300  
PO BOX 8928  
MADISON WI 53708

819 N 6TH ST  
ROOM 255  
MILWAUKEE WI 53203

Telephone: (608) 266-6860  
TTY: (608) 264-8752

Telephone: (414) 227-4384  
TTY: (414) 227-4081

Web Site: <http://dwd.wisconsin.gov/er>

**The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact us.**

This is one of a series of pamphlets highlighting programs of the Wisconsin Department of Workforce Development. It is intended to provide only a general description, not a legal interpretation.

**Other Wisconsin's Fair Employment Law Pamphlets**

#1 Fair Hiring & Avoiding Loaded Interview Questions  
#3 Pregnancy Employment & The Law  
#5 Fair Employment Law & Complaint Process  
#7 Settlement  
#9 Sexual Orientation Protection

#2 Harassment In The Workplace  
#4 Persons with Disabilities on the Job  
#6 Age Discrimination In The Workplace  
#8 Race, Color, National Origin and Ancestry